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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 2105 OF 2006
IN
WRIT PETITION NO. 8699 OF 2005

Maharashtra Gen. Kamgar Union ... Applicant

V/s

U.P. State Bridge Corpn. Ltd. ... Respondent

Mr. N.M.Ganguly for the applicant.

Mr. J.P.Cama with Mahesh Londhe i/by M/s. Sanjay Udeshi & Co. for the respondent.

CORAM: SMT. NISHITA MHATRE, J.

DATED: 14TH SEPT., 2007.

P.C.:

1. The civil application has been filed, claiming wages under Section 17B of the Industrial Disputes Act. This application has been filed by the applicant Union on behalf of 57 workmen. Affidavits have been filed by each one of them, wherein each one has averred that he is not gainfully employed in any establishment from the date the award was passed and that, therefore, he is entitled to be paid wages under Section 17B. The learned counsel for the respondent in the civil application i.e. the original petitioner, submits that

the affidavit filed by each of the workman is vague and in fact each workman ought to have disclosed as to how he was surviving for such a long period of time without work. According to the learned counsel, a bald statement that a workman is unemployed is not sufficient for directing the payment under Section 17B of the Act.

2. An affidavit has been filed by the respondent, the original petitioner, wherein it has been averred that some workmen were seen regularly moving on two wheelers in New Bombay. It is also stated that some of them are employed in establishments in New Bombay. This affidavit of the respondent is absolutely vague. There are no particulars as to which workman was seen and in which establishment that workman was working. Assuming that workmen were seen moving on two wheelers, it would not necessarily lead to the conclusion that they are gainfully employed.

3. The submission of the learned counsel for the respondent cannot be accepted. Over a period of time, case law has developed on the question of Section 17B of the Industrial Disputes Act, where the workman is expected to disclose whether he is gainfully employed during the period after the award is stayed by the High Court or the Supreme Court. Each of the workman has

stated that he is not gainfully employed. The application cannot be dismissed because the workman does not disclose in his affidavit as to how he subsists.

4. Civil application allowed in terms of prayer clause (a).

5. The arrears shall be paid within a period of six weeks from today.

6. Civil application disposed of.

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